

APPEAL NO. 041440
FILED AUGUST 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 19, 2004. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter.

The claimant appealed, essentially on a sufficiency of the evidence basis. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criteria in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work. Rule 130.102(b)(2). The claimant asserts that he met the good faith effort to obtain employment commensurate with his ability to work by documenting 121 job contacts with some contacts each week during the qualifying period. All of the claimant's job contacts were by telephone.

Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(e) then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan. The hearing officer in her Background Information discussion also questioned some aspects of the claimant's job search efforts. The claimant contends that he was just doing what various people (an adjuster) told him to do and that he had followed the same procedure in the fourth quarter and another hearing officer had found entitlement and the Appeals Panel had affirmed. We note however, that in Texas Workers' Compensation Commission Appeal No. 033061, January 14, 2004, we stated that another fact finder might have drawn other inferences from the evidence and reached a different conclusion. That has apparently happened in this case.

We have reviewed the complained-of determinations and conclude that whether the claimant's job contacts were a good faith effort to obtain employment commensurate with his ability to work was a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination was not so against the great weight and preponderance

of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MAYOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge